

Instrument Prepared by:  
James R. Hutchins,  
**Cardinal Pipeline Company, LLC**  
After Recording return to:  
Cardinal Pipeline Company, LLC  
Land Department, Level 17  
P.O. Box 1396, Houston, Texas 77251  
Tax Parcel ID 55788 & 424473

Line 7-107  
R/W 598

STATE OF NORTH CAROLINA       §

COUNTY OF WAKE                   §

**CONSENT TO USE EASEMENT AREA**

THIS AGREEMENT made this \_\_\_\_ day of October, 2020, by and between **TOWN OF APEX**, a municipal corporation, whose mailing address is P.O. Box 250, APEX, NC 27502 (hereinafter sometimes referred to as "APEX"), and **CARDINAL PIPELINE COMPANY, LLC**, (formerly known as Cardinal Extension Company, LLC) a North Carolina limited liability company, whose office address is 2800 Post Oak Boulevard, (P.O. Box 1396, Zip 77251), Houston Texas (hereinafter sometimes referred to as "CARDINAL").

WHEREAS, CARDINAL is the holder of rights of way and easements as described in Judgement Cardinal Extension Company, LLC v Willard C. Pleasant and Hazel J. Pleasant, filed July 10, 1999 and recorded on Book 8331 at Page 1478; and

WHEREAS, APEX is the present property owner of some or all the lands described in the hereinabove referenced Judgement evidenced by that certain Quit Claim Deed dated November 7, 2014, and recorded in Book 015834 at Page 0040-00044; and

WHEREAS, APEX desires to construct, install, operate and maintain certain improvements including, but not limited to a Twelve (12)inch diameter ductile iron water line and other improvements, hereinafter referred to as "FACILITIES" located partly on or within CARDINAL'S right of way; and

WHEREAS, CARDINAL is willing to consent to the above described use of its right of way, subject to the following terms and conditions:

**WITNESSETH:**

- 1) CARDINAL hereby offers no objection to APEX, insofar as it has the right to do so, to construct, place, install, operate and maintain FACILITIES located partly on or within CARDINAL's right of way as indicated above; said FACILITIES to be installed and located

as shown on drawings prepared by Withers & Ravenel entitled Construction Drawings for “Pleasant Park Phases 1B, 2, 3 & 4), dated March 13, 2020, a copy of which are in the possession of the parties hereto.

- 2) APEX accepts this consent with full knowledge of CARDINAL's prior rights and existing facilities and agrees to abide by the Letter of No Objection prepared by Mr. Mike Vietor, dated September 4, 2020, sent to Mr. Dennis Brown, Construction Project Administrator, Town of Apex. If any conflict arises between the Letter of No Objection and the Consent To Use Easement Area, the Letter of No Objection will prevail.
- 3) APEX acknowledges receipt of WGP-Transco Encroachment Specifications titled “Williams Requirements for Landowner and Third Party Construction,” revised July 22, 2020, (hereinafter “SPECIFICATIONS”) and warrants that any construction in the area of CARDINAL's right of way will conform to the conditions and requirements listed in said SPECIFICATIONS and Letter of No Objection.
- 4) No grading cuts will be allowed over the easement area unless allowed by the Letter of No Objection referenced above. A CARDINAL inspector must be on site during any grading over or on the CARDINAL easement.
- 5) Apex agrees to maintain a minimum of twenty-four (24) inches of separation under Cardinals facilities or as specified in the Letter of No Objection.
- 6) No trees are allowed within CARDINAL’S right of way. All landscaping to be located on or over CARDINAL’s right of way shall require prior approval from CARDINAL.
- 8) No additional facilities will be installed or parallel occupancy allowed within the Cardinal right of way without its expressed written consent.
- 9) Due to or during periods of construction, maintenance, inspection or replacement of its existing or future pipeline(s), Cardinal retains the right to cut or dig up any of the Improvements, pavement, sidewalks, curb, gutter, parking areas, driveways, highways, roads, streets, buildings, structures or other improvements of any kind (collectively “improvements”) that may be constructed or located within any portion of its existing easement area on the property, and Cardinal will have no responsibility or liability whatsoever for any repair, replacement or restoration of any such improvements. And in the event of any such action by Cardinal, or Cardinal’s exercise of its rights under the existing right of way agreement over the property, Cardinal shall have no liability whatsoever for any resulting or claimed loss of use or access to the property, loss of revenue or profits, diminution in property value, or any other costs or damages of any kind. However, Cardinal agrees to exercise reasonable care and prudent judgement to avoid damaging said Facilities.
- 10) **In consideration of the consent hereinabove granted, Apex hereby agrees to indemnify, defend and hold Cardinal harmless of and from all claims for injury to or death of any person or for damage to property arising out of or in any way connected with the installation, operation or maintenance of said FACILITIES on Cardinal's right of way, except where such injuries, death or damages are caused solely by the negligence of Cardinal.**
- 11) CARDINAL shall have no responsibility for the maintenance of the FACILITIES, or appurtenances thereto, authorized herein.
- 12) APEX shall provide to CARDINAL for themselves and/or their contractors, verification of comprehensive general liability insurance coverage in the minimum amount of at least \$5,000,000.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURES AND NOTARY ON FOLLOWING PAGE**

THIS AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, assigns, agents, administrators, successors or grantees, with the same force and effect as if specifically mentioned in each instance where APEX or CARDINAL is named.

ATTEST:

**TOWN OF APEX**

\_\_\_\_\_  
Donna B. Hosch, MMC, Town Clerk

\_\_\_\_\_(Seal)  
BY: Andrew L. Havens  
IT'S: Town Manager

WITNESS

**CARDINAL PIPELINE COMPANY, LLC,**  
By its Operator, Cardinal  
Operating Company

\_\_\_\_\_

\_\_\_\_\_  
BY: James R. Hutchins  
IT'S: Attorney-In-Fact

STATE OF NORTH CAROLINA §  
COUNTY OF §

I, \_\_\_\_\_ a Notary Public, certify that **Andrew L. Havens, Apex Town Manager** personally came before me this day and acknowledged he has the authority to execute the foregoing instrument.

Witness my hand and notarial seal this the \_\_\_\_ day of October, 2020.

(SEAL) \_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

STATE OF VIRGINIA §  
COUNTY OF ALBEMARLE §

I, Carol A. Crowley , Notary Public, certify that \_\_\_\_\_ personally came before me this day and acknowledged that James R. Hutchins is Attorney-In-Fact of **CARDINAL OPERATING COMPANY, LLC**, Operator for **CARDINAL PIPELINE COMPANY, LLC** and that by authority duly given and as the act of the corporation, the foregoing instrument is executed.

Witness my hand and official seal, this the \_\_\_\_\_ day of October, 2020.

(SEAL) \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_